



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2004

Mr. William O. Ashcraft  
Ashcraft Law Firm  
3900 Republic Center  
325 North St. Paul Street  
Dallas, Texas 75201

OR2004-7064

Dear Mr. Ashcraft:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207676.

North Central Texas College (the "college") received a request for twenty-nine categories of information related to notes and correspondence from specified meetings and interviews and certain information regarding the student government constitution. You state that the college has released some of the requested information to the requestor. You also represent that the college does not have information responsive to some of the categories of requested information.<sup>1</sup> Finally, you claim that the remaining requested information is excepted from disclosure under sections 552.026, 552.103, and 552.111 of the Government Code. We have considered the exceptions you claim.

Initially, we understand that the college has previously received a similar request for information in which you requested an opinion from this office. In response, this office issued Open Records Letter No. 2004-5075 (2004). We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed. Therefore, in regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that the college may continue to rely on the prior ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure).

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<sup>1</sup>We note that the Public Information Act ("Act") does not require the college to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

In regard to the responsive information that was not subject to our previous ruling, we address your responsibilities under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You failed to request a decision from this office within ten business days of receiving the request for information. Additionally, you have not submitted to this office copies or representative samples of the specific information that was requested nor have you submitted written comments stating the reasons why each exception that you raised would allow the information to be withheld. Consequently, you have failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Because you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information that was not subject to our previous ruling released in accordance with section 552.302.<sup>2</sup> If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

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<sup>2</sup>*But see* Open Records Decision No. 634 (1995) (educational agency or institution may withhold from public disclosure information protected by Family Educational Rights and Privacy Act and therefore excepted by section 552.026 without requesting attorney general decision as to that exception).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/krl

Ref: ID# 207676

Enc: Submitted documents

c: Ms. Pat S. Ledbetter  
5909 CR 135  
Gainesville, Texas 76240  
(w/o enclosures)